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**COOPERATION AGREEMENT BETWEEN**  
**THE CITY OF LYNCHBURG AND THE COUNTY OF CAMPBELL**

This Cooperation Agreement is made this 17<sup>th</sup> day of October, 2005, by and between the City of Lynchburg (the "City") and the County of Campbell (the "County") pursuant to Va. Code Ann. § 15.2-1300.

**RECITALS**

R1. Wards Crossing West, LLC, English Development Corporation, and English Building, LLC (collectively the "Developer") have proposed the development of the Wards Crossing West Shopping Center located primarily in Campbell County, but partially located in the City of Lynchburg.

R2. The County approved the rezoning of a portion of the Wards Crossing West site, subject to certain conditions, on November 1, 2004.

R3. The County and the City recognize that the area along Wards Road and the 460 Bypass between Wards Ferry Road and Airport Road (the "Development Area") will develop at some point in the future. The Development Area is comprised of approximately 200 acres.

R4. The foreseeable development of the Development Area will result in substantial traffic effects and service demands for both the County and the City.

R5. Traffic in the Wards Road, Wards Ferry Road, and 460 Bypass area is already near capacity.

R6. The County's Comprehensive Plan designates the Development Area for medium to high density commercial growth.

R7. The Developer requested that the City rezone a tract of approximately 1.6 acres and located at 108 Melinda Drive, Wards Ferry Road, and Wards Road from R-4 Multi-Family Residential District to B-3 Commercial Business District (Conditional) to allow private commercial access to serve Wards Crossing West. The City Council considered this rezoning request in November, 2004 and February, 2005. The Council did not approve the rezoning request.

R8. The Board of Supervisors adopted a Resolution dated February 22, 2005, that requires the construction of roads through the Development Area as a condition for future development

R9. The County and the City recognize that it is in their mutual interests that the development of the Development Area be well designed, consistent with the Comprehensive Plans of both localities, and consistent with the character of existing uses in the area, and that any adverse impact on property owners in the area from future development be mitigated.

R10. Virginia Code Ann. § 15.2-1300 authorizes counties and cities to enter into interlocal Cooperation Agreements for the cooperative exercise of powers.

### **COOPERATION AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the County agree to provisions set forth below:

1. **Purpose.** The purpose of this Cooperation Agreement is to establish the basis upon which the County and the City can cooperate in planning the development of the Development Area, cooperatively manage the impact of such development, and provide for the

mitigation of the costs associated with providing public services in connection with such future development.

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2. **Definitions.**

2.1 **Annual Service Fee.** The term “Annual Service Fee” shall mean the fee paid each year by the County to the City to offset a portion of the cost of providing services related to Wards Crossing West.

2.2 **Development Area.** The term “Development Area” shall mean the area of approximately 200 acres located in the Concord Election District along Wards Road and the 460 Bypass between Wards Ferry Road and Airport Road. The approximate boundaries of the Development Area are shown on the attached Exhibit 1.

2.3 **Development Area Access Road.** The term “Development Area Access Road” shall mean a public road to be designed and constructed at the County’s expense as provided for in Section 3 below.

2.4 **Development Area Master Plan.** The term “Development Area Master Plan” shall mean a Master Plan for infrastructure and land use development in the Development Area as provided for in Section 6 below.

2.5 **Development Area Property Owners.** The term “Development Area Property Owners” shall mean those persons who own property located in the Development Area.

2.6. **Developer.** The term “Developer” shall mean Wards Crossing West, LLC, English Development Corporation and/or English Building, LLC, or any successor entity acting as the Developer or owner of Wards Crossing West.

2.7. Wards Crossing West. The term “Wards Crossing West” shall mean the shopping center development proposed to be constructed in a portion of the Development Area in the County and the City by the Developer.

2.8. Wards Crossing West Entrance Road Parcel. The term “Wards Crossing West Entrance Road Parcel” shall mean the approximately 1.6 acre parcel located in the City at 108 Melinda Drive, Wards Ferry Road and Wards Road for which the Developer proposes to construct and maintain entrance roads serving the Wards Crossing West Shopping Center.

3. **Development Area Access Road.**

3.1 The County shall acquire the necessary rights-of-way and construct the Development Area Access Road to provide public road access from Leesville Road or Airport Road to the Development Area and Wards Crossing West.

3.2 Alignment. The anticipated approximate alignment of the Development Area Access Road is shown on the attached Exhibit 1. The final alignment shall be approved by the County consistent with the terms of this Cooperation Agreement and the Development Area Master Plan.

3.3 Rights-of-Way Acquisition. The County shall obtain binding contractual commitments from the Development Area Property Owners providing for the conveyance of the necessary rights-of-way to the County to allow the construction and maintenance of the Development Area Access Road which shall extend from Wards Ferry Road to an initial terminus at Leesville Road. It is the County’s intent to construct another access point at the remaining Airport Road terminus as future development occurs.

(a) The County shall acquire these binding contractual commitments for the Development Area Access Road not later than ninety (90) days from the execution of this agreement by both parties. Time is of the essence with respect to this provision.

(b) In the event the alignment of the Development Area Access Road crosses land within the boundaries of the City or property owned by the City in the boundaries of the County, the City will consider and act on all necessary land use, zoning, subdivision, and dedication or other approvals necessary to allow the construction and maintenance of the Development Area Access Road.

3.4 Design and Construction. The County shall fund the design and construction of the Development Area Access Road. The County anticipates that the design phase shall be complete within six (6) months of the Developer receiving its rezoning, Conditional Use Permit, and other required permits. The County anticipates that the construction phase shall be complete within eighteen (18) months of the Developer receiving its rezoning, Conditional Use Permit, and other required permits.

3.5 Maintenance. The County shall maintain the Development Area Access Road as a public road or shall arrange to have the road dedicated to the Virginia Department of Transportation to maintain the Development Area Access Road as a public road.

3.6 Wards Crossing West. The County shall not issue a certificate of occupancy for Phase I (as shown on Exhibit 2) prior to the completion of the traffic improvements required under Paragraph 5 hereof. In addition, the County shall not issue a certificate of occupancy for Phase II of Wards Crossing West improvements unless and until the County has acquired rights-of-way required

under this agreement, completed construction of the roadway within the Wards Crossing West section of the Development Area, and rough graded the public road to the third access point on Leesville Road. Regardless of this section, the County has agreed to construct the public road from Ward's Crossing to Leesville Road within eighteen (18) months of the Developer receiving its rezoning, Conditional Use Permit, and other required permits.

- 3.7 Special Service District. County will, as a means of financing the roads and other infrastructure improvements required in this agreement, designate the Development Area a Special Service District pursuant to Chapter 24 of title 15.2 of the Code of Virginia.

4. **Annual Service Fee.**

4.1 Payment. The County shall pay the Annual Service Fee to the City on or before December 31 of each year. The first Annual Service Fee shall be due on or before December 31, 2006.

(a) The County's obligation to pay the Annual Service Fee shall not be contingent on the County's receipt of any payments from the Developer.

4.2 Amount and Calculation of the Annual Service Fee. The amount of the Annual Service Fee shall be the difference between the County's real estate tax on the land and improvements at Wards Crossing West and what the real estate tax would be on such land and improvements applying the City's real estate tax rate.

**Example:**

Wards Crossing West assessed value of land:	\$ 2,000,000
Wards Crossing West assessed value of improvements:	\$ 18,000,000

County Real Estate Tax Rate: \$.52 per \$100

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Calculated County Real Estate Tax for Wards Crossing West: \$ 104,000

City Real Estate Tax Rate: \$ 1.11 per \$100

Calculated City Real Estate Tax for Wards Crossing West \$ 222,000

Difference between calculated County Real Estate Tax and  
Calculated City Real Estate Tax: \$ 118,000

Amount of Annual Service Fee: \$ 118,000

4.3 Annual Appropriations. The County agrees to appropriate annually the funds necessary to pay the Annual Service Fee.

(a) The obligation of the County to pay the Annual Service Fee shall be subject to and dependent upon appropriations being made from time to time by the Board of Supervisors of the County for such purpose. The County Administrator shall include in the proposed budget for each fiscal year all amounts required to be paid under this Cooperation Agreement during such fiscal year, and the County Administrator shall use his or her best efforts to obtain the annual appropriation throughout the term of this Cooperation Agreement.

(b) The County reasonably believes that it will continue to pay the Annual Service Fee as described herein for the duration of this Cooperation Agreement and that funds sufficient to make all payments required by the County during the term of this Cooperation Agreement can be obtained from County revenue sources and the County intends to make annual appropriations during the term of this Cooperation Agreement sufficient to make such payments. The County hereby declares its appropriations pursuant to this Cooperation Agreement to be necessary and desirable to secure and promote the general welfare of the inhabitants of the County, the commerce and industry of the County, and the resources and advantages of the County.

(c) Any other provision to the contrary notwithstanding, this Cooperation Agreement and the obligations herein shall not constitute a debt of the County within the meaning of any limitation on indebtedness of the County under any constitutional or statutory limitation and nothing in this Cooperation Agreement shall constitute a pledge of the full faith and credit of the County under any provision of state law or the constitution of Virginia.

5. **Traffic Management Improvements.**

5.1 The County and the City anticipate that it will be necessary to implement a traffic management plan in the vicinity of Ward Crossing West to minimize through traffic and to enhance traffic safety in the Vista Acres neighborhood.

(a) On or about July 1, 2006 the County shall pay the City \$100,000 to offset a portion of the cost of constructing traffic management improvements in the City in the vicinity of Wards Crossing West. The County's obligation to make this payment shall not be contingent on the County's receipt of any payments from the Developer. Furthermore, this shall not relieve the Developer of his obligations to install required turn lanes, traffic signals, signage and other necessary improvements in the immediate vicinity of the Wards Ferry Road entrances into Wards Crossing West and on Wards Road at its intersection with Wards Ferry Road, which are those shown on the site plan submitted to the City for rezoning and Conditional Use Permit approval.

6. **Development Area Master Plan.**

6.1 The County shall develop the Development Area Master Plan to guide the future development of the Development Area. The Development Area Master Plan shall address road improvements and other infrastructure improvements in the Development Area. The County



shall provide the City with an opportunity to comment on the proposed Development Area Master Plan prior to its final adoption.

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6.2 Comprehensive Plan Amendment. The County shall amend its Comprehensive Plan to incorporate the Development Area Master Plan as part of the Comprehensive Plan.

6.3 Consistency. The County shall require that all future development in the Development Area shall conform to the Development Area Master Plan. The County shall not grant development approvals for future development in the Development Area that do not substantially conform to the provisions of the Development Area Master Plan.

6.4 Timeline. Within six (6) months of the Developer receiving its rezoning, Conditional Use Permit, and other required permit approvals the County shall commence work on the Development Area Master Plan, which shall be completed no later than twelve (12) months following the Developer receiving its rezoning, Conditional Use Permit, and other required permits. The City of Lynchburg will be involved during the development of the Master Plan and further shall have 90 days following its completion to comment on the proposed Master Plan prior to submission to the Campbell County Planning Commission and Campbell County Board of Supervisors for inclusion in the County's Comprehensive Plan.

7. **Wards Crossing West Entrance Road Parcel Rezoning.**

7.1 The County has been advised that the Developer will submit rezoning and Conditional Use Permit requests to the City for the Wards Crossing West Entrance Road Parcel that allows the Developer to build a structure and align an entrance road with Logan's Roadhouse within the 100 year flood plain, as well as a second entrance that aligns with the

current Target entrance. The City shall consider any such request for rezoning and Conditional Use Permit in a reasonable and timely manner consistent with the provisions of the City of Lynchburg Zoning Ordinance and this cooperation Agreement. The rezoning request shall include the proffers and site plan attached as Exhibit 2. The City agrees to expedite scheduling of the required public hearings for the Planning Commission and City Council, with City Council taking final action on or before December 15, 2005.

8. **Termination.**

8.1 Any party may terminate this Cooperation Agreement in the event that the other party is in breach, in any material respect, provided that the party seeking to terminate this Cooperation Agreement has given notice in writing to the other party of the alleged breach and such alleged breach has not been rectified to the reasonable satisfaction of the party complaining, within sixty days of the giving of such notice, then this Cooperation Agreement will be terminated ninety days after the giving of such notice.

8.2 The City shall have the unilateral option to terminate this Cooperation Agreement if the County fails to acquire the binding contractual commitments for rights-of-way acquisition within ninety (90) days of the Developer receiving its rezoning, Conditional Use Permit, and other required permit approvals.

8.3 Either party may terminate this Cooperation Agreement in the event the Developer abandons the Wards Crossing West project.

8.4 The County shall have the unilateral option to terminate this Cooperation Agreement if the Developer fails to obtain from the City the approvals reasonably necessary to allow the Wards Crossing West Development to proceed by December 15, 2005.

9. **Site Plan Review/Wards Crossing West.**

9.1 The County shall take the lead role in the site plan review, approval and enforcement process for Wards Crossing West. The County shall ensure that the City has a reasonable opportunity to participate in the site plan review process and to comment on proposed site plan documents.

(a) Any development of land within the City's boundaries associated with Wards Crossing West shall be subject to site plan review, approval, and enforcement by the City under applicable City ordinances.

10. **Erosion and Sediment Control/Storm Water Managements.**

10.1 Whenever current County regulatory requirements for erosion and sediment control or stormwater management conflict with City regulatory requirements, and the activity affects areas of the City, the County shall incorporate the City's regulatory requirements into the site development process and shall, to the extent practicable, apply the City's regulatory requirements to the entire site to allow for more consistent development.

11. **Duration.** This Cooperation Agreement shall remain in effect for a period of forty (40) years from the date of execution.

12. **Disputes.** In the event the parties are unable to informally resolve any dispute ~~that may arise from or be related to this Cooperation Agreement, the parties agree that no legal~~ action shall be instituted in any court until after the parties have engaged in formal mediation conducted by a trained mediator. The parties further agree that either party may make a written demand for formal mediation with respect to any dispute and that both parties shall honor such written demand.

13. **Assignment.** No party shall, without the prior consent of the other, which consent shall not be unreasonably withheld, assign, or otherwise transfer its rights and obligations under this Cooperation Agreement to any third party.

14. **Merger, Amendment and Waiver.** This Cooperation Agreement contains the entire understanding between the parties with respect to the Development Area and Wards Crossing West project. No amendment or waiver of any of the terms, provisions, or conditions of this Cooperation Agreement shall be effective unless in writing and executed by the parties. No delay or failure by any part to enforce any right or obligation hereunder shall be deemed to be a waiver of such right or obligation nor shall any waiver of any specific breach of this Cooperation Agreement be deemed to be a waiver of any other or additional breach, similar or dissimilar.

15. **Governing Law.** This Cooperation Agreement shall be governed by and shall be construed in accordance with the laws of the Commonwealth of Virginia. The parties hereby consent to the jurisdiction of the Circuit Courts for the County of Campbell and the City of Lynchburg in any proceeding brought under the provisions of this Cooperation Agreement.

16. **Counterparts.** This Cooperation Agreement may be executed by the parties in ~~any number of counterparts, each of which shall be deemed to be an original document, but all of~~ which, taken together, shall constitute one and the same Cooperation Agreement.

17. **Authority.** Each of the undersigned individuals executing this Cooperation Agreement in a representative capacity hereby represents and warrants that he or she is authorized to enter into this Cooperation Agreement on behalf of the party which he or she purports to represent, the appropriate resolutions have been passed and obtained, and that this Cooperation Agreement shall be the legal, valid and binding obligation of such party.

18. **Execution of Documents.** Each party agrees to execute and deliver such additional or other documents and instruments and to take such further actions as may be reasonably necessary to carry out fully the intent and purpose of this Cooperation Agreement.

19. **Severability.** If any provision of this Cooperation Agreement or the application thereof to any party or circumstances shall, to any extent, be adjudged invalid or unenforceable in any jurisdiction, then: (a) such provision shall not be affected in any other jurisdiction; (b) the application of the other provisions of this Cooperation Agreement to said party or circumstances shall not be affected; and (c) the application of this Cooperation Agreement to any other party or circumstances shall not be affected thereby.

20. **Notice.** Except as otherwise provided herein, any notice, requests, consents, approval, demand or other communications required or permitted hereunder shall be in writing and shall be given (a) when received, if mailed, registered or certified mail, return receipt requested, postage prepaid, or (b) when delivered in person against a written receipt therefor, addressed to the parties as follows:

Notice to: Mr. R. David Laurell  
County Administrator  
~~Campbell County~~  
P. O. Box 100  
Rustburg, Virginia 24588

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David Shreve, Esq.  
County Attorney  
Campbell County  
P. O. Box 547  
Altavista, Virginia 24517

Notice to: Mr. L. Kimball Payne  
City Manager  
City of Lynchburg  
900 Church Street  
Lynchburg, Virginia 24504

Walter C. Erwin, III, Esq.  
City Attorney  
City of Lynchburg  
900 Church Street  
Lynchburg, Virginia 24504

IN WITNESS WHEREOF, the parties have caused this Cooperation Agreement to be  
executed by their duly authorized officers as of the date above first written.

CITY OF LYNCHBURG, VIRGINIA

By: Kimball Sykes  
Its: City Manager

COUNTY OF CAMPBELL

By: [Signature]  
Its: County Administration

**EXHIBIT 1**

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**Map showing Development Area Boundaries**

**EXHIBIT 2**

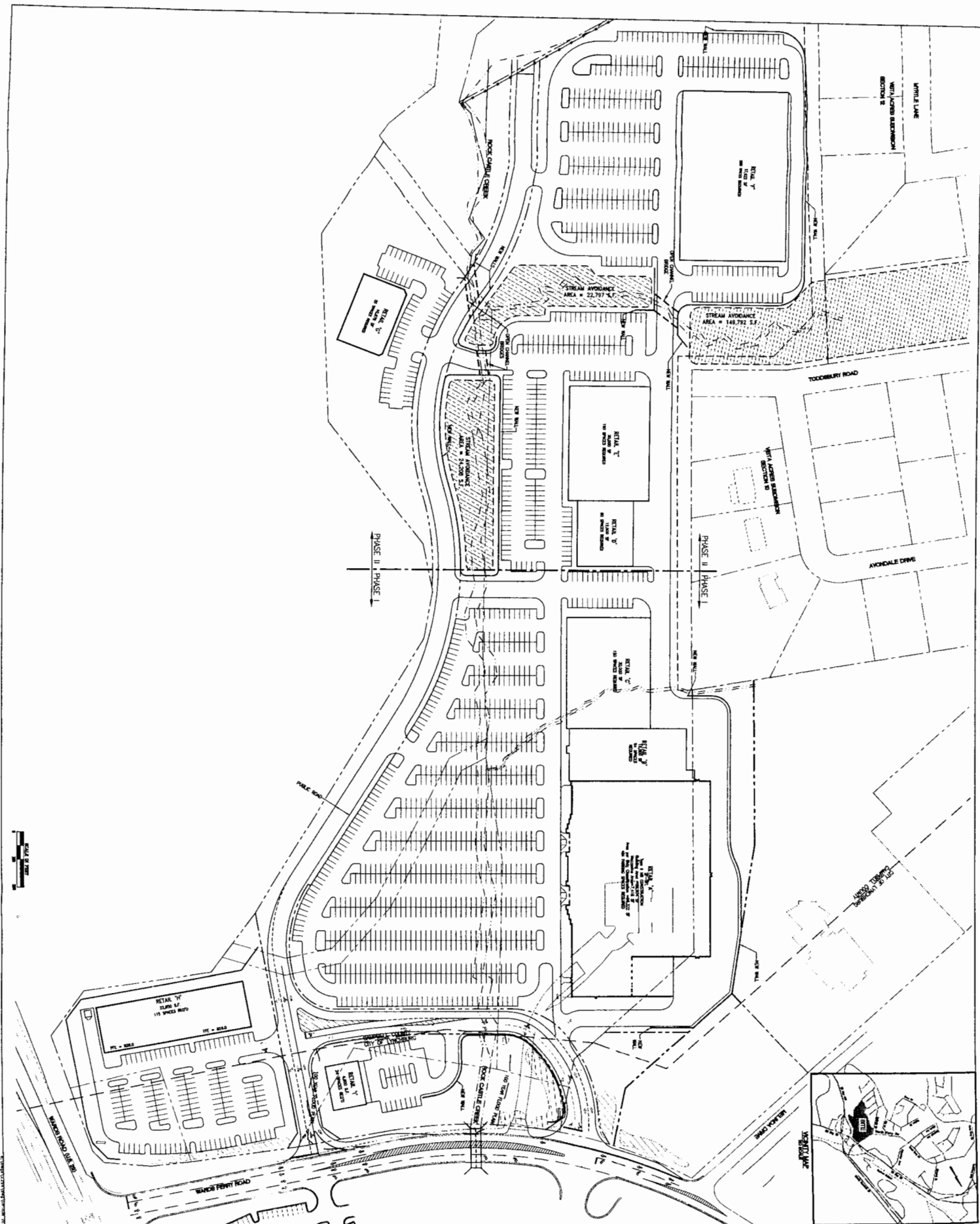
**Map showing layout of Wards Crossing West**



# EXHIBIT 1 DEVELOPMENT AREA

 The boundaries are approximate and  
 may be subject to acquisition of property  
or easements not yet granted.





<b>1</b>	<b>OPTION 2L</b> CAMPBELL COUNTY (LYNCHBURG), VIRGINIA	<b>Mattern &amp; Craig</b> CONSULTING ENGINEERS & ARCHITECTS 100 WEST STREET LYNCHBURG, VIRGINIA 24502 (434) 525-1100 FAX (434) 525-1101	Issue Date: 04/14/2008 Drawn By: JCV Checked By: JCV Date: 04-14-2008	Approved: _____ Date: _____	_____ Date: _____
			_____ Date: _____	_____ Date: _____	_____ Date: _____